

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 587 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

DHULABHAI BHURABHAI RAVAL

Appearance:

MR KP RAVAL APP for Appellant-State.

MR KS JHAVERI for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/12/98

ORAL JUDGEMENT

1. Respondent herein/ original accused was tried by learned Judicial Magistrate, First Class, Santrampur, for commission of offence punishable under Sections 279 and 338 of the Indian Penal Code ('IPC' for short) and Sections 177 and 184 of the Motor Vehicles Act ('the Act' for short), in Criminal Case No. 645 of 1990, arraigned on charge of having committed offence of driving S.T.Bus No. GRU 6883 so rashly which endangers human life and dashed the same with the hand-cart which was being pulled by victim Shankerbhai Nathabhai, on 28.5.1990, and caused fracture injury to him in the said accident. At the conclusion of the trial, learned Magistrate found the evidence adduced by the prosecution to be unsatisfactory,

and resultantly, acquitted the respondent of the offence with which he was charged.

2. Being aggrieved by the aforesaid finding of recording of acquittal, the State of Gujarat has come in appeal by invoking the aids of provisions of Section 378 of the Criminal Procedure Code.

3. The prosecution case, in nutshell, as averred in the FIR is as under:

On 28.5.1990, respondent - Dhulabhai Bhurabhai Raval, who was in the employment of the S.T. Corporation, alongwith conductor Shankerbhai Manjibhai, proceeded in S.T. Bus No. GRU 6883 towards Lunawada. When the bus reached near Mota Dharola, near Malvan, he dashed the bus with the hand-cart being pulled by Shankerbhai Nathabhai. As a result of the impact, victim Shankerbhai Nathabhai fell down and sustained grievous injury i.e., fracture of right femur. The hand-cart was also turned turtle. A complaint in that regard was lodged before concerned police station at Santrampur, by Rudhabhai Somabhai, who claimed to be an eye witness. The offence was registered and the investigating officer recorded statements of various witnesses including that of the injured. On completion of the investigation, respondent was charge-sheeted and tried for the aforesaid offences before the learned Magistrate, as mentioned hereinabove.

4. The learned Magistrate, after framing charge, recorded evidence of witnesses. Evidence of complainant - Rudhabhai Somabhai was recorded, who, inter alia, testified that he was waiting at the bus stand of Mota Dharola for going to Lunawada. At that time, he saw Shankerbhai Nathabhai proceeding towards home after unloading his hand-cart. At that time, the S.T. bus dashed with his hand-cart as a result of which he was thrown away into the drainage. He has further testified that the bus was coming at full speed. He also identified the driver who was sitting in the Court room. He was shown the complaint at Ex.7 and he has admitted his signature. However, during cross-examination, he has unequivocally stated that he has not seen whether the bus dashed with the hand-cart or the hand-cart dashed with the bus. Except the fact that the driver of the bus was driving it at full speed, this witness has not stated anything as to whether the driver of the bus was rash and negligent in driving it. He has admitted that the victim Shankerbhai Nathabhai belongs to his town.

5. Similarly, injured Shankerbhai Nathabhai has testified that the bus was coming at a speed of 80 KMPH. He has further testified that the bus dashed with him and his cart and as a result of the impact he fell down in the drainage. During cross-examination, he has admitted that in his statement before the police he has stated that the bus dashed with the hand-cart and the cart dashed with him and, therefore, he fell down.

6. Witness Sardarbhai Punjabhai has deposed the similar version as deposed by the victim Shankerbhai and the complainant Rudhabhai.

7. So far as the evidence of the conductor of the S.T. bus - Shankerbhai Manjibhai is concerned, as he has not supported the prosecution version he was declared hostile. However, during his cross-examination, he has denied the suggestion about the exorbitant speed of the bus.

8. On appreciation of the evidence, the learned Magistrate reached to the conclusion that none of the witnesses have deposed with respect to rashness and negligence of the S.T.driver, i.e., the accused. The learned Magistrate has also observed that at the place of occurrence, there is a curvature and naturally at curvature, speed cannot be excessive or exorbitant. The learned Magistrate, therefore, came to the conclusion that it is difficult to ascertain whether the S.T.bus dashed with the hand-cart or the hand-cart dashed with the S.T.bus. Resultantly, he came to the conclusion that the prosecution has failed to establish the charge levelled against the respondent/accused and, therefore, acquitted the respondent.

9. I have perused the entire collection of testimony evidence including panchnama. On having look at the evidence of the eye witnesses it could be divulged that no eye witness including the victim has stated that the driver of the bus was rash and negligent in driving the bus at the relevant time. On the contrary, upon perusal of Panchnama, Ex.10, it could be gathered that the S.T. bus GRU 6883 was standing facing towards western side and on the rear portion of the bus, on the driver's side, near the angle, there was one dent and one axil came out and on the northern side of the tar road one hand-cart was lying turtled. From the above, one thing is clear that either the hand-cart dashed with the S.T.bus or the S.T.bus dashed with the hand-cart at the rear portion of the bus on the driver's side. Therefore, no negligence, whatsoever, could be attributed to the driver of the bus.

Had it been a case that the S.T. bus dashed with the front portion, it could have said that the driver of the bus was rash and negligent. On seeing the panchnama it becomes abundantly clear that the bus driver was not negligent in driving the bus at the relevant time. Therefore, according to me, in view of the unsatisfactory evidence led by the prosecution, it cannot be said that any error is committed by the learned Magistrate in acquitting the respondent/original accused.

10. In view of the above discussion, following aspects can be culled out:

- (i) it is established that the respondent who was in employment of the S.T. Corporation was driving the said vehicle at the relevant time,
- (ii) it is not established that he was driving the bus so rashly which endangers human life,
- (iii) occurrence of the accident, as alleged, is established. It is also established that the cart dashed with the rear side of the bus, on driver's side, as a result of which the cart puller received grievous injury i.e., fracture,
- (iv) none of the witnesses examined by the prosecution has deposed that at the relevant time the respondent was driving the bus in a rash and negligent manner,
- (v) from the position of the vehicle, after accident, as could be seen from the panchnama, it is abundantly clear that the cart dashed with the rear side of the S.T. bus.
- (vi) at the spot of occurrence there is a curvature and, therefore, the S.T. bus driver could not have driven the vehicle in great speed.
- (vii) evidence adduced by the prosecution is so scanty to reach to the conclusion that the offence alleged against the respondent is established.

11. Moreover, this is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of the

learned Magistrate. As this Court is in general agreement with the view expressed by the learned Magistrate, it is not necessary for this Court either to reiterate the evidence of the prosecution witnesses or to restate reasons given by the learned Magistrate for acquittal and in my view, expression of general agreement with the view taken by the learned Magistrate would be sufficient in the facts of the present case for not interfering with the judgment of the learned Magistrate and this is so, in view of the decisions rendered by the Supreme Court in the case of Girija Nandini Devi and others v. Bijendra Narain Chaudhari, AIR 1967 SC 1124 and State of Karnataka v. Hema Reddy and another, AIR 1981 SC 1417. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondent/original accused. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondent/original accused and the learned A.P.P. has failed to dislodge the reasons given by the learned Magistrate and convince this Court to take a view contrary to the one taken by the learned Magistrate. Therefore, there is no merits in the acquittal appeal.

12. In the result, the appeal fails and is dismissed.

(karan)